

**Remarks**  
submitted 30 September 2009

[001] This is in response to the Office Action dated 06 July 2009.

[002] Amendments [None at this time].

[003] In parag 2. of the O/A, the date mentioned is incorrect. However, nothing arises from this error.

[004] Double Patenting

On Page 3 of the O/A, the examiners say: obvious . . . to provide coolant pumping apparatus having a set of swirl vanes, a radiator port and a radiator port closer as taught in the prior art, and modify the arrangement of these components such that each is arranged inside of pumping chamber, as taught by Arnold . . .

The examiners suggest that the motivation to put these items in the chamber would be: in order to improve the operation of the vanes and increase the efficiency of the pump.

By their phrase "as taught in the prior art", we take it the examiners mean "as disclosed in the granted patent, US-6,887,046" -- which is the patent that is the subject of the double-patenting rejection. (The O/A gives no indication that the examiners wanted us to construe their phrase in some other way.)

Thus, in rejecting our patent application, the examiners tabled a new variant of one of the pumping apparatuses disclosed in US-6,887,046. The examiners themselves have devised this new variant of '046, and they assert that they have done so simply by following the teachings contained in the Arnold disclosure.

In other words, the new variant arises from a combination of two items of prior art, namely our own US-6,887,046 and the Arnold US-2002/0,187,061.

In a double patenting rejection of a claim-PA in a patent application PA, the claim-PA is rejected as being a merely obvious double of a claim-PG in a granted patent PG. But in such a case, the disclosure in the granted patent PG cannot be used as prior art in the double-patenting rejection of claim-PA. See MPEP 804 II B 1: When considering whether the invention defined in a claim of an application would have been an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art.

The examiners have not provided an explanation why they are entitled to disregard this provision. That being so, the examiners have not made out a prima facie case justifying the rejection, and the rejection must be withdrawn for that reason.

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Enclo: (none)